

AUG 08 2005

TRANSMITTAL LETTER  
(General - Patent Pending)

Docket No.  
0830.061A

In Re Application Of: CAPANO et al.

Application No. 09/977,067	Filing Date 10/12/2001	Examiner Daryl C. Pope	Customer No. 23405	Group Art Unit 2632	Confirmation No. 1830
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Title: METHODS AND APPARATUS FOR MONITORING SEWER SYSTEM OPERATION

COMMISSIONER FOR PATENTS:

Transmitted herewith is:

- 1) One Return Receipt Postcard;
- 2) Transmittal Letter;
- 3) Response to Notification of Non-Compliant Appeal Brief (3 pp);
- 4) Copy of CONSOLIDATED PATENT RULES (3 pp).

in the above identified application.

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David A. Pascarella

*Signature*

Dated: August 4, 2005

David A. Pascarella, Esq.  
Registration No. 36, 632  
HESLIN ROTHENBERG FARLEY & MESITI P.C.  
5 Columbia Circle  
Albany, New York 12203  
Telephone: (518) 452-5600  
Facsimile: (518) 452-5579

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(Date)

David A. Pascarella

*Signature of Person Mailing Correspondence*

David A. Pascarella

*Typed or Printed Name of Person Mailing Correspondence*

cc:



0830.061A

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Appellants: Capano et al.

Group Art Unit: 2632

Serial No.: 09/977,067

Examiner: Pope, Daryl C.

Filed: October 12, 2001

Appeal No.:

Title: METHODS AND APPARATUS FOR MONITORING SEWER SYSTEM  
OPERATION

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the U.S. Postal Service with sufficient postage as first class mail in an envelope addressed to: Mail Stop Appeal Briefs – Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on August 4, 2005.

David A. Pascarella

David A. Pascarella  
Attorney for Appellants  
Reg. No. 36,632

Date of Signature: August 4, 2005

To: Mail Stop Appeal Briefs – Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

RESPONSE TO NOTIFICATION OF NON-COMPLIANT APPEAL BRIEF

Dear Sir:

This paper is filed in response to the Notice mailed July 27, 2005 for the above-referenced patent application. A response to the Notice is initially due on or before August 27, 2005, and therefore, this response is timely filed.

REMARKS

In the Notification Of Non-Compliant Appeal Brief, it was indicated that Appellants' Brief allegedly does not contain the items required by 37 CFR 1.192(c) under the appropriate headings and/or in the order indicated. In particular, Appellants' Brief allegedly does not include appropriate headings titled "Issues" and "Grouping of Claims" and the heading in Appellants' Brief titled "Grounds of Rejection to be Reviewed on Appeal" allegedly is improper.

It is respectfully submitted that 37 CFR 1.192 has been removed and reserved under the recent changes to the rules of practice before the Board of Patent Appeals and Interferences. See, the attached copy of the first page (R-1) of the Consolidated Patent Rules, Title 37 – Code of Federal Regulations, Patents, Trademarks, and Copyrights, dated July 1, 2005, and page R-106 thereof.

Under the recent change to the rules of practice before the Board of Patent Appeals and Interferences, 37 CFR 41.37 identifies the requirements of former Rule 192. In particular, 37 CFR 41.37(c)(1)(vi) specifically lists the heading "Grounds of Rejection to be Reviewed on Appeal" as being proper and in accordance with the new rules. See, the attached copy of page R-281 of the Consolidated Patent Rules.

CONCLUSION

Accordingly, withdrawal of the Notification Of Non-Compliant Appeal Brief and entry of Appellants' Brief are respectfully requested.

Respectfully submitted,



David A. Pascarella  
Attorney for Appellants  
Registration No. 36,632

Dated: August 4, 2005

HESLIN & ROTHENBERG FARLEY & MESITI P.C.  
5 Columbia Circle  
Albany, New York 12203-5160  
Telephone: (518) 452-5600  
Facsimile: (518) 452-5579

Enclosure:

Consolidated Patent Rules, pages R-1, R-106, and R-281.



## CONSOLIDATED PATENT RULES

### Title 37 - Code of Federal Regulations Patents, Trademarks, and Copyrights

**Editor's Note (July 1, 2005):** All final rules that became effective since the last revision of the Manual of Patent Examining Procedure (MPEP) dated May 2004 are identified below by the *Federal Register* Notice cites and the *Official Gazette* Notice cites, where applicable. These final rules have been incorporated in the Title 37 – Code of Federal Regulations document below. The *Federal Register* Notices are the authoritative source in the event that there are discrepancies between the patent rules in this document and the rules as published in the *Federal Register*.

**TITLE:** Revision of Power of Attorney and Assignment Practice  
**ACTION:** Final Rule  
**FEDERAL REGISTER:** 69 FR 29865 (May 26, 2004)  
**OFFICIAL GAZETTE:** 1283 O.G. 148 (June 22, 2004)  
**EFFECTIVE DATE(S):** June 25, 2004

**TITLE:** Changes To Representation of Others Before the United States Patent and Trademark Office  
**ACTION:** Final Rule  
**FEDERAL REGISTER:** 69 FR 35427 (June 24, 2004)  
**OFFICIAL GAZETTE:** 1288 O.G. 109 (Nov. 16, 2004)  
**EFFECTIVE DATE(S):** July 26, 2004

**TITLE:** Elimination of Credit Cards as Payment for Replenishing Deposit Accounts  
**ACTION:** Final Rule  
**FEDERAL REGISTER:** 69 FR 43751 (July 22, 2004)  
**OFFICIAL GAZETTE:** 1285 O.G. 101 (Aug. 17, 2004)  
**EFFECTIVE DATE(S):** Aug. 23, 2004

**TITLE:** Rules of Practice Before the Board of Patent Appeals and Interferences  
**ACTION:** Final Rule  
**FEDERAL REGISTER:** 69 FR 49959 (Aug. 12, 2004)  
**OFFICIAL GAZETTE:** 1286 O.G. 21 (Sept. 7, 2004)  
**EFFECTIVE DATE(S):** Sept. 13, 2004

**TITLE:** Revision of Patent Fees for Fiscal Year 2005  
**ACTION:** Final Rule  
**FEDERAL REGISTER:** 69 FR 52604 (Aug. 27, 2004)

**OFFICIAL GAZETTE:**  
**EFFECTIVE DATE(S):** Oct. 1, 2004

**TITLE:** Revision of Patent Fees for Fiscal Year 2005; Correction  
**ACTION:** Final Rule; Correction  
**FEDERAL REGISTER:** 69 FR 55505 (Sept. 15, 2004)  
**OFFICIAL GAZETTE:**  
**EFFECTIVE DATE(S):** Oct. 1, 2004

**TITLE:** Changes To Support Implementation of the United States Patent and Trademark Office 21st Century Strategic Plan  
**ACTION:** Final Rule  
**FEDERAL REGISTER:** 69 FR 56481 (Sept. 21, 2004)  
**OFFICIAL GAZETTE:** 1287 O.G. 67 (Oct. 12, 2004)  
**EFFECTIVE DATE(S):** Sept. 21, 2004, Oct. 21, 2004, and Nov. 22, 2004

**TITLE:** Rules of Practice Before the Board of Patent Appeals and Interferences  
**ACTION:** Final Rule; Correcting Amendments  
**FEDERAL REGISTER:** 69 FR 58260 (Sept. 30, 2004)  
**OFFICIAL GAZETTE:**  
**EFFECTIVE DATE(S):** Sept. 30, 2004

**TITLE:** Changes To Implement the Patent Fee Related Provisions of the Consolidated Appropriations Act, 2005  
**ACTION:** Final Rule  
**FEDERAL REGISTER:** 70 FR 3880 (Jan. 27, 2005)  
**OFFICIAL GAZETTE:** 1291 O.G. 133 (Feb. 22, 2005)  
**EFFECTIVE DATE(S):** Dec. 8, 2004

**TITLE:** Changes To Implement the Cooperative Research and Technology Enhancement Act of 2004  
**ACTION:** Interim Rule  
**FEDERAL REGISTER:** 70 FR 1818 (Jan. 11, 2005)  
**OFFICIAL GAZETTE:** 1291 O.G. 58 (Feb. 8, 2005)  
**EFFECTIVE DATE(S):** Dec. 10, 2004

**TITLE:** Revision of Search and Examination Fees for Patent Cooperation Treaty Applications Entering the National Stage in the United States  
**ACTION:** Interim Rule  
**FEDERAL REGISTER:** 70 FR 5053 (Feb. 1, 2005)

## APPEAL TO THE BOARD OF PATENT APPEALS AND INTERFERENCES

### § 1.191 Appeal to Board of Patent Appeals and Interferences.

Appeals to the Board of Patent Appeals and Interferences under 35 U.S.C. 134(a) and (b) are conducted according to part 41 of this title.

[46 FR 29183, May 29, 1981; para. (a), 47 FR 41278, Sept. 17, 1982, effective Oct. 1, 1982; para. (d), 49 FR 555, Jan. 4, 1984, effective Apr. 1, 1984; 49 FR 48416, Dec. 12, 1984, effective Feb. 11, 1985; paras. (b) and (d) amended, para. (e) added, 54 FR 29553, July 13, 1989, effective Aug. 20, 1989; para. (d) revised, 58 FR 54504, Oct. 22, 1993, effective Jan. 3, 1994; paras. (a) and (b) revised, 62 FR 53131, Oct. 10, 1997, effective Dec. 1, 1997; para. (a) revised, 65 FR 76756, Dec. 7, 2000, effective Feb. 5, 2001; para. (e) revised, 68 FR 14332, Mar. 25, 2003, effective May 1, 2003; para. (a) revised, 68 FR 70996, Dec. 22, 2003, effective Jan. 21, 2004; revised, 69 FR 49959, Aug. 12, 2004, effective Sept. 13, 2004]

[42 FR 5595, Jan. 28, 1977; paras. (b) & (c), 47 FR 41278, Sept. 17, 1982, effective Oct. 1, 1982; para. (a), 49 FR 48416, Dec. 12, 1984, effective Feb. 11, 1985; para. (b) revised 53 FR 23735, June 23, 1988, effective Sept. 12, 1988; para. (b) revised, 58 FR 54504, Oct. 22, 1993, effective Jan. 3, 1994; revised, 62 FR 53131, Oct. 10, 1997; removed and reserved, 69 FR 49959, Aug. 12, 2004, effective Sept. 13, 2004]

### § 1.192 [Reserved]

[36 FR 5850, Mar. 30, 1971; para. (a), 47 FR 41278, Sept. 17, 1982, effective Oct. 1, 1982; para. (a), 49 FR 556, Jan. 4, 1984, effective Apr. 1, 1984; 53 FR 23734, June 23, 1988, effective Sept. 12, 1988; para. (a), (c), and (d) revised, 58 FR 54504, Oct. 22, 1993, effective Jan. 3, 1994; paras. (a)-(c) revised, 60 FR 14488, Mar 17, 1995, effective Apr. 21, 1995; para. (a) revised, 62 FR 53131, Oct. 10, 1997, effective Dec. 1, 1997; removed and reserved, 69 FR 49959, Aug. 12, 2004, effective Sept. 13, 2004]

### § 1.195 [Reserved]

[34 FR 18858, Nov. 26, 1969; removed and reserved, 69 FR 49959, Aug. 12, 2004, effective Sept. 13, 2004]

### § 1.196 [Reserved]

[24 FR 10332, Dec. 12, 1959; 49 FR 29183, May 29, 1981; 49 FR 48416, Dec. 12, 1984, effective Feb. 12, 1985; para. (b) revised, 53 FR 23735, June 23, 1988, effective Sept. 12, 1988; paras. (a), (b) & (d) amended, paras. (e) & (f) added, 54 FR 29552, July 13, 1989, effective Aug. 20, 1989; para. (f) revised, 58 FR 54504, Oct. 22, 1993, effective Jan. 3, 1994; paras. (b) & (d) revised, 62 FR 53131, Oct. 10, 1997, effective Dec. 1, 1997; removed and reserved, 69 FR 49959, Aug. 12, 2004, effective Sept. 13, 2004]

### § 1.197 Return of jurisdiction from the Board of Patent Appeals and Interferences; termination of proceedings.

(a) *Return of jurisdiction from the Board of Patent Appeals and Interferences.* Jurisdiction over an application or patent under ex parte reexamination proceeding passes to the examiner after a decision by the Board of Patent Appeals and Interferences upon transmittal of the file to the examiner, subject to appellant's right of appeal or other review, for such further action by appellant or by the examiner, as the condition of the application or patent under ex parte reexamination proceeding may require, to carry into effect the decision of the Board of Patent Appeals and Interferences.

(b) *Termination of proceedings.*

(1) Proceedings on an application are considered terminated by the dismissal of an appeal or the failure to timely file an appeal to the court or a civil action (§ 1.304) except:

(i) Where claims stand allowed in an application; or

### § 1.194 [Reserved]

(c) Prior to the entry of a decision on the appeal by the Board, the Director may *sua sponte* order the proceeding remanded to the examiner.

[Added, 69 FR 49959, Aug. 12, 2004, effective Sept. 13, 2004]

### § 41.37 Appeal brief.

(a)(1) Appellant must file a brief under this section within two months from the date of filing the notice of appeal under § 41.31.

(2) The brief must be accompanied by the fee set forth in § 41.20(b)(2).

(b) On failure to file the brief, accompanied by the requisite fee, within the period specified in paragraph (a) of this section, the appeal will stand dismissed.

(c)(1) The brief shall contain the following items under appropriate headings and in the order indicated in paragraphs (c)(1)(i) through (c)(1)(x) of this section, except that a brief filed by an appellant who is not represented by a registered practitioner need only substantially comply with paragraphs (c)(1)(i) through (c)(1)(iv) and (c)(1)(vii) through (c)(1)(x) of this section:

(i) *Real party in interest.* A statement identifying by name the real party in interest.

(ii) *Related appeals and interferences.* A statement identifying by application, patent, appeal or interference number all other prior and pending appeals, interferences or judicial proceedings known to appellant, the appellant's legal representative, or assignee which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal. Copies of any decisions rendered by a court or the Board in any proceeding identified under this paragraph must be included in an appendix as required by paragraph (c)(1)(x) of this section.

(iii) *Status of claims.* A statement of the status of all the claims in the proceeding (e.g., rejected, allowed or confirmed, withdrawn, objected to, canceled) and an identification of those claims that are being appealed.

(iv) *Status of amendments.* A statement of the status of any amendment filed subsequent to final rejection.

(v) *Summary of claimed subject matter.* A concise explanation of the subject matter defined in

each of the independent claims involved in the appeal, which shall refer to the specification by page and line number, and to the drawing, if any, by reference characters. For each independent claim involved in the appeal and for each dependent claim argued separately under the provisions of paragraph (c)(1)(vii) of this section, every means plus function and step plus function as permitted by 35 U.S.C. 112, sixth paragraph, must be identified and the structure, material, or acts described in the specification as corresponding to each claimed function must be set forth with reference to the specification by page and line number, and to the drawing, if any, by reference characters.

(vi) *Grounds of rejection to be reviewed on appeal.* A concise statement of each ground of rejection presented for review.

(vii) *Argument.* The contentions of appellant with respect to each ground of rejection presented for review in paragraph (c)(1)(vi) of this section, and the basis therefor, with citations of the statutes, regulations, authorities, and parts of the record relied on. Any arguments or authorities not included in the brief or a reply brief filed pursuant to § 41.41 will be refused consideration by the Board, unless good cause is shown. Each ground of rejection must be treated under a separate heading. For each ground of rejection applying to two or more claims, the claims may be argued separately or as a group. When multiple claims subject to the same ground of rejection are argued as a group by appellant, the Board may select a single claim from the group of claims that are argued together to decide the appeal with respect to the group of claims as to the ground of rejection on the basis of the selected claim alone. Notwithstanding any other provision of this paragraph, the failure of appellant to separately argue claims which appellant has grouped together shall constitute a waiver of any argument that the Board must consider the patentability of any grouped claim separately. Any claim argued separately should be placed under a subheading identifying the claim by number. Claims argued as a group should be placed under a subheading identifying the claims by number. A statement which merely points out what a claim recites will not be considered an argument for separate patentability of the claim.

(viii) *Claims appendix.* An appendix containing a copy of the claims involved in the appeal.